

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WILLIE DAVIS, JR., et al

Plaintiffs,

v.

MOUNTAIRE FARMS, INC., et al

Defendant.

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Civil No 04-414-SLR

PARTIES' RESPONSE REGARDING PRELIMINARY INSTRUCTION

The parties have conferred concerning two issues raised in the Pretrial Conference and have the following response:

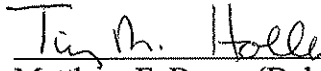
1. The parties agree that the summary of the issues in the preliminary instruction (at 4) should use the entire "hire and fire test" rather than an abbreviated version. The instruction thus would read:

You must determine whether plaintiffs were individuals who had the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees were given particular weight. (29 C.F.R. § 541.100)

2. The parties agree that the preponderance of the evidence instruction applies to all questions of fact, including the issue of a willful violation.

Defendant's counsel is authorized to state that this response speaks for all parties.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Tim M. Holly", is written over a horizontal line.

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